



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Christopher E. Mandel, Director
Risk Management Division
National Headquarters
American Red Cross
Washington, DC 20006

Re: American Red Cross compliance with 40 CFR 280 Subpart H

Dear Mr. Mandel:

I apologize for the delay in providing you with written confirmation of our phone discussion on May 10, 1991 regarding your request for a determination of whether the American Red Cross can meet the requirements of 40 CFR 280 Subpart H (Financial Responsibility requirements) through the use of the financial test of self-insurance.

As I had mentioned during our phone conversation, it is our conclusion that, based on a comprehensive review of the regulations as they now stand, the American Red Cross does not qualify for the following reasons:

" As recognized in your letter (of October 4, 1990), the American Red Cross does not meet the reporting requirements of 40 CFR 280(b) (4). First, the financial statements of the American Red Cross, although publicly available, are not provided to the securities and Exchange Commission (SEC), the Energy Information Administration (EIA), or the Rural Electrification Administration (REA), as required under 40 CFR 280(b) (4) (i). The regulations require this specific reporting to ensure both that the implementing authority has ready access to current financial statements and that the financial statements are developed in a format that allows verification of compliance with the requirements of the financial test. Because the American Red Cross does not report to these agencies, the requirement that the implementation have ready access to the financial statements, if needed, is not met.

Second, as a non-profit agency, the American Red Cross is not awarded an asset size classification by Dun & Broadstreet. Under 40 CFR 280(b)(4)(ii) an asset size classification of 4A or 5A would be an acceptable substitute for submittal of financial statements to the SEC, the EIA, or the REA.

The American Red Cross's financial statements are not developed according to the Generally Accepted Accounting Principles (GAAP) that were assumed during development of the financial test of self-insurance. First, the "fund" accounting used by non-profit agencies such as the Red Cross recognizes separate funds that are legally restricted to specific purposes (e.g., the donor restricted fund). Such restrictions limit the ability to make parallels between financial statements for private corporation and non-profit agencies. Second, the accounts receivable of approximately \$250 million does not appear to have been adjusted for unrecoverable amounts. We would anticipate that accounts receivable of this magnitude would contain some proportion of unrecoverable amounts, particularly if the amounts reflect nonbinding pledges rather than debts for services rendered.

Although we have not undertaken an examination of the accounting practices to identify all discrepancies between corporate financial accounting and accounting for non-profit agencies, these two differences are enough to show that the financial statements prepared by the American Red Cross do not adhere to the practices assumed by EPA when the financial test of self-insurance was developed.

For these reasons, we are unable to approve the use of the financial test of self-insurance for the American Red Cross.

As You may be aware, EPA, on August 14, 1991, proposed an additional extension of the deadline for non-marketers to comply with financial responsibility requirements until December 31, 1992 (56 FR 40292). Although EPA had strong reasons for proposing the extension, promulgation is not assured. I have enclosed a copy of the, proposed rule for your information. Your comments on the proposal will be most welcome.

I hope that this letter answer your questions. If I can be of further assistance, please give me a call at (703) 308-8882.

Yours truly,

/s/

Sammy K. Ng, Acting Director
Policy and Standards Division
Office of Underground Tanks

Enclosure

cc: Lee Tyner, Office of General Counsel, EPA